

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of §305.71.

Background and Summary of the Factual Basis for the Proposed Rule

House Bill 3618 (HB 3618 or bill), 85th Texas Legislature (2017), repealed Texas Water Code (TWC), §26.0285 which required, to the greatest extent practicable, that all Texas Pollutant Discharge Elimination System (TPDES) permits within a single watershed contain the same expiration date (known as basin permitting). The bill also amended TWC, §26.0135(d) to remove language that coordinated submittal of summary reports by river authorities with the existing "basin permitting rules" previously required under TWC, §26.0285.

TWC, §26.0135 was created by the 72nd Texas Legislature (1991). Also known as "the Texas Clean Rivers Act," the legislation provided a framework for river authorities and TCEQ's predecessor agency to establish a public input process, strategic monitoring, and the periodic assessment of water quality within each river basin of the state. Since 1991, river authorities and other partners in TCEQ's Clean Rivers Program have continued to provide surface water quality monitoring and assessments of waterbodies in Texas' river basins. TCEQ uses this information in water quality management programs such as the Texas Integrated Report of Surface Water Quality, the Texas Surface Water Quality Standards, total maximum daily loads, watershed protection plans, and wastewater permitting.

TWC, §26.0285 was created by the 75th Texas Legislature (1997) to create the basin permitting program. State and federal rules allow permits to be issued for five-year terms. In order to comply with basin permitting rules, a substantial number of TPDES permits were required to be issued for terms between two and four years.

This rulemaking will implement HB 3618 changes related to TWC, §26.0285. In a corresponding rulemaking, published in this issue of the *Texas Register*, the commission also proposes amendments to 30 TAC §220.4, Responsibilities of River Authorities and Designated Local Governments, and §220.6, Reporting Requirements, to implement HB 3618 changes to TWC, §26.0135(d).

Section Discussion

§305.71, Basin Permitting

The proposed rulemaking would implement HB 3618 by repealing §305.71, which requires basin permitting for wastewater discharges. Repealing §305.71 will allow TPDES permits to be issued for five-year terms, as allowed by §305.127(1)(C)(i).

Fiscal Note: Costs to State and Local Government

Maribel Montalvo, analyst in the Chief Financial Officer Division, determined that for the first five-year period the proposed rulemaking is in effect, fiscal implications are anticipated for the agency which may be significant, and no fiscal implications are

expected for units of state or local government unless they have been applicants for wastewater discharge permits for terms between two and four years to correspond to a river basin cycle. Those that currently apply for such permits may experience cost savings as a result of the administration or enforcement of the proposal.

The proposed rulemaking would implement HB 3618. HB 3618 repealed TWC, §26.0285 which required, to the greatest extent practicable, that all TPDES permits within a single watershed contain the same expiration date (known as basin permitting). The proposed rulemaking implements these changes by repealing §305.71.

Federal rules allow TPDES permits to be issued for five-year terms. However, current agency Basin Permitting rules require a significant number of wastewater discharge permits to be issued for terms between two and four years to correspond to a river basin/segment cycle. Permit amendments are often sought by permittees during the permit term and often result in the amended permit being re-issued "off cycle". It typically requires two-permit terms to sync a permit which is "off cycle" to expire on its designated basin expiration date. Likewise, new permits must be set to expire on the basin expiration date. Repealing §305.71 will allow wastewater discharge permits to be issued for five-year terms.

The proposed rulemaking is expected to reduce workload for the TCEQ's Water Quality Division staff because over time, fewer wastewater discharge permits will be processed

and issued. The proposed timing of the expiration of the permits reduces the frequency of reviewing and processing permit applications. Over the past five years, 1,553 permits were issued with a reduced (less than five-year) permit term. This averages to approximately 310 permits that were issued each year with a reduced permit term. The reduced workload will allow resources to be reallocated to other agency water program priorities and therefore any cost savings are not expected to be significant.

The proposed rulemaking will reduce the number of permit applications submitted to the agency and therefore the associated permit application fees that are received by the agency and deposited to the Water Resource Management Account 153. Permit application fees range from \$350 to \$2,050 each, depending on factors such as effluent flow volume and the United States Environmental Protection Agency (EPA) facility classification. TCEQ databases do not store the application fee for each application received, so staff cannot provide an exact number for the decrease in revenue. If, on average, approximately 310 permits were issued each year with a reduced permit term then revenue losses could be estimated to be between \$108,500 and \$635,500 each year. Depending upon future water program obligations and appropriations from Account 153, this loss in revenue may be significant.

State agencies that apply for a new wastewater discharge permit or that choose to amend their existing permit prior to its expiration date may experience cost savings by

allowing these permits to be issued for a five-year term. Approximately 20 reduced term permits were issued to state agencies over the past five years.

Local government entities (such as cities, counties, school districts, and utility districts) that apply for a new wastewater discharge permit or that choose to amend their existing permit prior to its expiration date are affected by the proposed rulemaking. Over the past five years, approximately 804 reduced term permits were issued to local governments. Affected local governments are likely to experience cost savings similar to affected state agencies.

Affected state and local governments may experience cost savings due to the proposed change for wastewater discharge permits to be issued for five-year terms. The commission estimates that wastewater discharge permit application preparation costs range from \$7,000 to \$30,000. For each wastewater permit application submitted to TCEQ, applicants will pay application preparation costs, application fees (between \$350 and \$2,050 each, depending on factors such as effluent flow volume and EPA facility classification), and costs for the publication of public notices. Newspaper publication costs are estimated to range from \$500 to \$8,800. Exact cost savings are difficult to estimate due to the complexities of applications and site specific criteria for each permit.

Public Benefits and Costs

Ms. Montalvo also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rulemaking will be more efficient and cost effective administration of wastewater discharge permits.

The proposed rulemaking will have fiscal implications only for those businesses and individuals that reduce the submittal frequency of wastewater discharge permit applications due to the proposed change for wastewater discharge permits to be issued for five-year terms. Approximately 592 businesses and 29 individuals were issued a reduced term permit, over the past five years. Depending on the specific factors surrounding each permit, the cost savings may or may not be significant.

These affected businesses and individuals are likely to experience cost savings. The commission estimates that wastewater discharge permit application preparation costs range from \$7,000 to \$30,000. For each wastewater permit application submitted to TCEQ, applicants will pay application preparation costs, application fees (between \$350 and \$2,050 each, depending on factors such as effluent flow volume and EPA facility classification), and costs for the publication of public notices. Newspaper publication costs are estimated to range from \$500 to \$8,800. Exact cost savings are difficult to estimate due to the complexities of applications and site specific criteria for each permit.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. Approximately 179 small businesses and 119 micro-businesses were issued a reduced term permit, over the past five years. These affected small and micro-businesses are likely to experience cost savings if they reduce the submittal frequency of wastewater discharge permit applications due to the proposed change for wastewater discharge permits to be issued for five-year terms. The cost savings for small and micro-businesses is expected to be the same as those savings for larger businesses.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not necessary because the proposed rulemaking will not adversely affect small or micro-businesses for the first five-year period the proposal is in effect and the proposed rulemaking is required by state law.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five-year period that

the proposal is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposal does not adversely affect a rural community in a material way for the first five-year period that the proposed rulemaking is in effect. These state-wide rules will not affect rural communities or non-rural communities differently in any way. The proposed rulemaking is expected to result in cost savings for affected rural communities who reduce the submittal frequency of wastewater discharge permit applications due to the proposed change for wastewater discharge permits to be issued for five-year terms.

Government Growth Impact Assessment

The commission prepared a Government Growth Impact Statement Assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency (although there is a decrease in the frequency of the wastewater discharge permit application fee for some entities); create a new regulation; nor increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposal would be in effect, it is not anticipated

that there will be an adverse impact on the state's economy. Entities who apply for a new wastewater discharge permit or that choose to amend their existing permit prior to its expiration date may experience cost savings by allowing these permits to be issued for a five-year term.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking will repeal a rule that required wastewater discharge permits be issued on its respective river basin cycle. This rule resulted in TPDES permits often being issued for less than five years duration, which is the maximum permit term

allowed under the TPDES program. This change is proposed because the 85th Texas Legislature repealed TWC, §26.0285, which required wastewater discharge permit terms, to the greatest extent practicable, to correspond with their respective river basin cycle. Repeal of this rule will allow TCEQ to issue TPDES wastewater discharge permits for full five-year terms, which will result in overall less processing time for these types of permits by TCEQ and less frequent renewals by permittees. The rulemaking does not meet the definition of "major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the commission finds that this rulemaking is not a "major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the rulemaking does not exceed federal standards because no applicable

federal standards exist regarding river basin permitting. Also, the rulemaking does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. The memorandum of agreement between EPA and TCEQ regarding delegation of the National Pollutant Discharge Elimination System program allows wastewater discharge permits to be issued in accordance with the river basin cycle or a five-year renewal cycle. Finally, the rulemaking was not developed solely under the general powers of the agency; but as a result of the repeal of TWC, §26.0285. Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed rules do not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invites public comment on the Draft Regulatory Impact Analysis Determination. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this.

Takings Impact Assessment

The commission performed an assessment of this rule in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to repeal the rule that requires wastewater discharge permits to be issued in conjunction with their respective basin cycle. Repeal of this rule will constitute neither a statutory nor a constitutional taking of private real property. This rulemaking will impose no burdens

on private real property because the proposed rule neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §33.201 *et. seq.*, and therefore, it must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rulemaking in accordance with Coastal Coordination Act Implementation Rules at 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rulemaking includes: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas and to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

Promulgation and enforcement of this rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rulemaking is consistent with these CMP goals and policies, and because this

rulemaking does not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 12, 2017, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2017-025-305-OW. The comment period closes on December 18, 2017. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Laurie Fleet, Wastewater Permitting Section, at (512) 239-5445.

**SUBCHAPTER D: AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS,
REVOCATION, AND SUSPENSION OF PERMITS**

[§305.71]

Statutory Authority

This repeal is proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt rules necessary to carry out the powers and duties under the TWC and other laws of the state.

The proposed repeal implements House Bill 3618, 85th Texas Legislature, 2017, which repealed TWC, §26.0285.

[§305.71. Basin Permitting.]

[(a) Upon receipt of wastewater discharge permit applications, excluding permits for confined animal feeding operations, the commission, to the greatest extent practicable, will evaluate all future applications within a single river basin within the same year. The future expiration dates for all permits issued after the effective date of this section shall be in accordance with the basin schedules in subsection (b) of this section. However, no permit shall be issued for a term of less than two years, except as specified in this subsection. If the schedule indicates a term of less than two years, then two terms between two and five years in length will be utilized in order to

coincide with the schedule. There may be instances where two permit cycles are needed for some permits before they are on the basin cycle. The commission may issue new Texas Pollutant Discharge Elimination System (TPDES) permits for less than two years duration for discharges authorized by an existing state permit issued before September 14, 1998.]

[(b) The expiration dates of wastewater discharge permits issued after the effective date of this rule will be in accord with the following schedule.]

[Figure: 30 TAC §305.71(b)]

BASIN	SEGMENT	EXPIRATION DATE
FISCAL YEAR 1996		
01: Canadian River	0100 - 0105	October 1, 1995
02: Red River	0200 - 0229	December 1, 1995
03: Sulphur River	0300 - 0306	January 1, 1996
04: Cypress Creek	0400 - 0409	February 1, 1996
05: Sabine River	0506 - 0515	March 1, 1996
	0500 - 0505	April 1, 1996
24: Bays and Estuaries	2411	June 1, 1996
06: Neches River	0610 - 0614	August 1, 1996
	0600 - 0609	August 1, 1996
08: Trinity River	0824 - 0841	September 1, 1996
FISCAL YEAR 1997		
08: Trinity River	0819 - 0823	October 1, 1996
	0805 - 0818	December 1, 1996
	0800 - 0804	February 1, 1997
10: San Jacinto River	1017	March 1, 1997

	1014	May 1, 1997
	1010 - 1013	June 1, 1997
	1007	September 1, 1997
FISCAL YEAR 1998		
10: San Jacinto River	1015 - 1016	December 1, 1997
	1009	February 1, 1998
	1008	March 1, 1998
	1006	May 1, 1998
	1000 - 1005	July 1, 1998
07: Neches-Trinity Coastal	0700 - 0704	July 1, 1998
24: Bays and Estuaries	2412	July 1, 1998
	2422 - 2423	July 1, 1998
09: Trinity-San Jacinto Coastal	0900 - 0902	August 1, 1998
24: Bays and Estuaries	2426	August 1, 1998
	2428 - 2430	August 1, 1998
11: San Jacinto-Brazos Coastal	1100 - 1113	September 1998
FISCAL YEAR 1999		
24: Bays and Estuaries	2421	October 1, 1998
	2424 - 2425	October 1, 1998
	2427	October 1, 1998
	2431 - 2439	November 1, 1998
12: Brazos River	1242 - 1255	December 1, 1998
	1227 - 1241	March 1, 1999
	1220 - 1226	March 1, 1999
	1204 - 1219	May 1, 1999
	1200 - 1203	July 1, 1999
13: Brazos-Colorado Coastal	1300 - 1305	July 1, 1999
24: Bays and Estuaries	2441 - 2442	August 1, 1999
16: Lavaca	1600 - 1605	August 1, 1999
14: Colorado River	1417 - 1433	September 1, 1999

FISCAL YEAR 2000		
14: Colorado River	1400 - 1416	December 1, 1999
15: Colorado-Lavaca	1500 - 1502	December 1, 1999
24: Bays and Estuaries	2451 - 2452	December 1, 1999
	2453 - 2456	January 1, 2000
17: Lavaca-Guadalupe	1700	February 1, 2000
18: Guadalupe River	1800 - 1818	February 1, 2000
19: San Antonio River	1900 - 1913	March 1, 2000
20: San Antonio-Nueces Coastal	2000 - 2004	March 1, 2000
24: Bays and Estuaries	2461 - 2463	March 1, 2000
	2471 - 2473	March 1, 2000
	2481 - 2483	April 1, 2000
21: Nueces River	2100 - 2117	May 1, 2000
22: Nueces-Rio Grande Coastal	2200 - 2204	June 1, 2000
24: Bays and Estuaries	2484 - 2485	June 1, 2000
	2491 - 2494	July 1, 2000
23: Rio Grande	2300 - 2314	September 1, 2000
25: Gulf of Mexico	2500	September 1, 2000

[(c) Renewal applications for permits expiring on or after September 1, 1995, shall be due at least 180 days before the expiration date of the effective permit. The executive director may grant permission for a later date; however, applications must be submitted prior to the expiration date of the permit.]

[(d) The executive director may require submission of a renewal application sooner than the dates set out in subsections (b) and (c) of this section upon a

determination that a particular waste disposal activity necessitates a more frequent evaluation.]

[(e) Permits generally will be issued to maintain a five-year cycle of the expiration date schedule in subsection (b) of this section. The commission may issue a permit for less than a five-year term if it determines that a shorter term is necessary.]